

REMARKS

I. Office Action Summary

Claims 31-52 are pending. Claims 31, 36 and 43 are the independent claims. In the final Office Action, all of the pending claims were rejected. Claims 31-33, 36, 38 and 40-41 were rejected as anticipated by Braecklein (US 1,671,010) under 35 U.S.C. §102(b). Claims 34-35, 37 and 39 as rejected as obvious over the following combinations of references:

Rejected Claim	Prior Art Reference
34, 37	Braecklein + Benos (US 2,238,964)
35	Braecklein + Blount (US 3,182,659)
39	Braecklein + Benos + Blount

Claims 33, 38-40 and 42-46 were rejected as indefinite under 35 U.S.C. §112, second paragraph. Finally, claims 42-52 were rejected over claims 1-13 of the issued parent case (US 5,988,160) for obviousness-type double patenting.

II. Interview Summary

The undersigned spoke with Examiner Lewis on December 17, 2004 and January 5, 2005 regarding the October 6, 2004 Office Action. The undersigned thanks the Examiner for the courtesy extended in those discussions. The section 112 rejection ("tunnel-like" language) was discussed. Also, the alleged product-by-process language (e.g. a valve integrally formed in an opening of a wall) was discussed. No agreement was reached on the "tunnel-like" language, however the Examiner agreed that the integrally formed language, in the context used in the current claims, did not make the claims product by process claims.

III. Rejections Under 35 U.S.C. § 102(b)

Claim 31

Claim 31 relates to a mask for the inhalation of medication including, *inter alia*, a valve integrally formed with a wall of the mask. Braecklein discloses an inhaler mask adapted for inhalation of chlorine gas mixed with air. Both an

inhalation valve and an exhalation valve are shown in Braecklein. These valves (identified by reference numerals 14 and 17) are described as having a removable perforated cap (15,18) within which a movable disk (16,19) is floating so that the disk seats or unseats against the end of the respective inhalation or exhalation conduit of the mask that the perforated cap is secured to (See Braecklein, page 1, lines 74-91).

Based on the above-mentioned interview, it is Applicant's understanding that the valve integral with the wall is properly considered as a physical feature of the claim. Accordingly, Applicant notes that Braecklin neither teaches nor suggests an integral valve. Applicant has amended claim 31 to further clarify the language referring to the integral valve. Applicant submits that the added language reiterates the existing language and does not narrow the scope of claim 31.

Claim 36

Although claim 36 differs in scope from claim 31, the arguments set forth above with respect to the lack of an integral valve in Braecklein apply equally to claim 36. The Examiner, in comments regarding claim 36, states that Braecklein discloses an exhalation valve integral with a wall of the mask. As discussed above, a removable valve is the only type of valve taught or suggested by Braecklein. The very nature of the only valve disclosed in Braecklein, that of a floating disk captured between the end of an opening in the mask and the removable, perforated cap, is clearly not integral and does not suggest an integral valve or how the disclosed valve even could be converted to an integral valve. Accordingly, for at least these reasons, Applicant submits that claim 36 is allowable over Braecklein. Claim 36 has been amended to further clarify the language referring to the integral valve. Applicant submits that the added language reiterates the existing language and does not narrow the scope of claim 36. Claims 37-42 are dependent claims, therefore their allowability directly follows from the allowability of independent claim 36.

IV. Rejections Under 35 U.S.C. § 103

Claims 34 and 37

The Examiner rejected claims 34 and 37 over the combination of Braecklein and Benos. Braecklein, as discussed previously, fails to teach or suggest an integral valve. Benos, although disclosing a duckbill-type valve, also fails to show an integral valve and thus does not make up for the deficiencies of Braecklein. Applicant disagrees that there is any teaching or suggestion to combine the Braecklein and Benos references, and also disagrees that claim 34 and 37 are of similar scope. Accordingly, Applicant submits that claims 34 and 37 are allowable for at least the same reasons as provided for their respective independent claims (31 and 36).

Claim 35

Dependent claim 35 was rejected as obvious over the combination of Braecklein and Blount. Blount, as Braecklein, fails to teach or suggest an integral valve. Accordingly, for at least the same reasons as provided for independent claim 31, Applicant submits that claim 35 is in condition for allowance.

Claim 39

Dependent claim 39 was rejected as obvious over the combination of Braecklein, Benos and Blount. As well as including the features of claims 36 and 38, claim 39 recites the feature of exhalation valve movement being visible through a wall of an extension. Applicant submits that, in addition to lacking an integral valve (claim 36), the cited references fails to teach or suggest an extension in which the exhalation valve is recessed (claim 38). Accordingly, Applicant submits that claim 39 is allowable over the cited art.

V. Rejections Under 35 U.S.C. § 112

The term “tunnel-like” was objected to as making claims 33, 38-40 and 42-46 indefinite. Applicant respectfully disagrees and notes that the term clearly describes the disclosed extension shown, for example, in FIGS. 1-6. The mere fact that all possible versions of “tunnel-like” extensions are not shown in the specification does not limit the ability of Applicant to claim this feature based on

the version that is expressly shown. Applicant appreciates the Examiner's courtesy in offering a potential substitute for this language, (e.g. tunnel shaped), however Applicant submits that this only reinforces the argument that tunnel-like is definite. In order to expedite allowance of the claims, Applicant has broadened these claims by removing the "tunnel-like" language altogether.

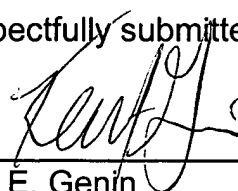
VI. Rejections For Obviousness-type Double Patenting

The Examiner rejected claims 42-52 for obviousness-type double patenting in view of claims 1-13 of U.S. Patent No. 5,988,160. Applicant respectfully disagrees with this rejection, but will submit a suitable terminal disclaimer upon indication of allowability of the pending claims over the above-noted rejections.

VII. Conclusion

In view of the amendments and remarks above, Applicant respectfully submits that all of the pending claims (31-52) are in condition for allowance. If any questions arise or issues remain, the Examiner is requested to contact the undersigned at the number listed below in order to expedite disposition of this case.

Respectfully submitted,



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